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DESIGNATING A PLAT OF LAND AS "RESERVED FOR SEWAGE DISPOSAL" IN ITSELF DOES NOT CONSTITUTE A DEDICATION OF THE AREA CONCERNED TO THE PUBLIC FOR SUCH PURPOSES—OPINION 7113., OAG, 1956., §711.10, R.C.

SYLLABUS:

Where under section 711.10, Revised Code, a plat is approved by a county planning commission, such plat designating an area as "Reserved for sewage disposal purposes," such designation, in itself, does not constitute a dedication of the area concerned to the public for such purposes so as to require that the title of such area be transferred on official county records, to the county.

Columbus, Ohio, December 21, 1962

Hon. James H. Deweese, Prosecuting Attorney
Miami County, Troy, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The Miami County Planning Commission has required all developers of plats within its jurisdiction, containing 20 or more lots, to set aside 1 or more lots for future sewage disposal purposes. Plats containing areas designated 'Reserved for sewage disposal purposes' have been approved by the Board of County Commissioners, the County Planning Commission and filed with the County Recorder. The County Auditor now wonders whether the areas reserved for such sewage disposal purposes should now be transferred on the duplicate to reflect ownership in the county.

“In other words, does such reservation for future sewage disposal purposes operate as a dedication of such tracts for public purposes?”

In Opinion No. 7113, Opinions of the Attorney General for 1956, page 679, the second paragraph of the syllabus reads:

“A county or regional planning commission may, under the terms of Section 711.10, Revised Code, require, within the limits of its territorial jurisdiction, as a condition precedent to its approval of a plat, compliance with rules reasonably regulating the size of lots or requiring the dedication of a reasonable amount of land for park purposes.”

The above-noted conclusion was based on the authority of a county planning commission under Section 711.10, Revised Code, to adopt general rules and regulations of uniform application, governing plats and subdivisions of land falling within its jurisdiction, to secure and provide for the proper arrangement of streets or other highways in relation to existing or planned streets or highways or to the county plan, for adequate and convenient open spaces for traffic, *utilities*, access of fire fighting apparatus, recreation, light, air, and for the avoidance of congestion of population.

Under the reasoning of Opinion No. 7113, *supra*, and in view of the provision of Section 711.10, *supra*, as to utilities, it is probable that a county planning commission may require as a condition precedent to approval of a plat that areas be reserved for sewage disposal purposes. I do not deem it necessary to further discuss that question herein, however, as the plats in the instant matter have already been approved by the county planning commission and by the board of county commissioners, said plats containing areas designated “Reserved for sewage disposal purposes.”

Your request for opinion asks whether a reservation such as here concerned operates as a dedication of the land for public purposes and, if so, whether the ownership of the land should be transferred on the duplicate to the county upon the approval of the plat by the planning commission and the board of county commissioners.

In 17 Ohio Jurisprudence 2d, 6, Section 2, it is stated:

“A dedication is a voluntary appropriation or gift of land to some public use, made by the owner of the fee, and accepted for such use, by or on behalf of the public. It arises when the owner intends that his property shall be devoted to public use and opens it to the public, and the public accepts the same.”

In 26 Corpus Juris Secundum, 398, Section 1, it is said:

“A dedication is a devotion of land to a public use, by an unequivocal act of the owner of the fee, manifesting the intention that it shall be accepted and used presently or in the future for such public purpose.”

Thus, a dedication of land involves a voluntary offer to dedicate such land for a public use, and an acceptance of the same by the public; and it is essential to a dedication that there was, on the part of the dedicator, a clear intention to part with ownership of his land and vest it in the general public.

I do not believe that the reservation of lands as here concerned may, in itself, be construed to constitute a dedication. First, it might well be argued that a dedication under the instant circumstances is impossible since the reservation of lands is a requirement rather than a voluntary action of the person making the reservation. Second, the mere placing of the words “Reserved for sewage disposal purposes” does not appear to necessarily indicate a clear intention to vest the land in the general public; such words could mean that the owner intends to retain title to the land even though using it for those purposes. In this regard, it is stated in 26 Corpus Juris Secundum, 440, Section 22:

“Reservations of designated land marked in a plat dedicating streets, alleys, public grounds, etc., to the public is not a dedication of such land to the public, but on the contrary clearly negatives an intent to dedicate it.”

(Here I assume that the plats in question do dedicate streets, etc., in addition to the reservation here concerned.)

And in the case of *Swanson v. Gillan*, 54 R.I., 382 (1934), in considering the effect of the words “5 ft. strip reserved,” appearing on a plat, the court said, at page 383:

“The first question before us is the construction of the word ‘Reserved’ as used on said plat. In Webster’s New International Dictionary the word word is defined as “something kept back or withheld, as for future use.” This meaning has been recognized by courts which have construed the word ‘reserved’ to mean that the owner does not intend a dedication. *Cleveland v. Bergen Bldg. Co.*, 55 Atl. (N.J.) 177; *Harris v. St. Helens*, 72 Ore. 377; *Grant v. Davenport*, 18 Iowa 179; *Grand Crossing Land Co. v. Mobridge*, 39 S. D. 574; *Orton v. Harney*, 23 Wis. 99 * * * The intention of dedicating the land to public use is contradicted by the very use of the word “reserved.” * * *

I might further note that even if the persons in question intended to dedicate the lands here concerned to the public, there is a definite question whether the fee simple title to the lands would automatically vest in the county upon the approval of the plat. Sections 711.01, 711.02 and 711.11, Revised Code, appear to imply such a vesting (See Opinion No. 619, Opinions of the Attorney General for 1919, page 1104) ; but Section 711.10, Revised Code, dealing with approval of plats by regional and county planning commissions, states :

“* * * After a county or regional street or highway plan has been adopted as provided in this section, the approval of plats and subdivisions provided for in this section shall be in lieu of any approvals provided for in other sections of the Revised Code, so far as the territory within the approving jurisdiction of the county or regional planning commission, as provided in this section is concerned. *Approval of a plat shall not be an acceptance by the public of the dedication of any street, highway, or other way or open space shown upon the plat.* * * *”

(Emphasis added)

Having already determined that a dedication does not result from a reservation such as here concerned, however, I do not deem it necessary to determine herein at what time land which are properly dedicated by plat would vest in the county.

Although my above conclusion negatives a dedication under the facts presented, I might note in passing that future acts of the owner of the platted land and of the public may result in the areas in question being dedicated to the public under an implied dedication. In this regard, it is stated in 17 Ohio Jurisprudence 2d, 28, Section 26:

”It is well established in Ohio, in accordance with the general rule elsewhere, that where the owner of real property makes a plat thereof, showing streets, alleys, squares, or commons, and sells lands with reference to such plat, and the streets or other ways or places indicated thereon are used by the public, he thereby, in the absence of any circumstances to show that they are limited or restricted to a private use or purpose, dedicates them to a public use. This was the rule prior to the enactment of any statute providing for the recording of plats of a subdivision of property, and even since the enactment of the statute, a valid dedication of property to a public use may still result from the platting or laying out of ground on the usual common-law principles, where such platting or laying out is not sufficient to constitute a statutory dedication. * * *”

In summary, therefore, it is my opinion and you are advised that where under Section 711.10, Revised Code, a plat is approved by a county planning commission, such plat designating an area as "Reserved for sewage disposal purposes," such designation, in itself, does not constitute a dedication of the area concerned to the public for such purposes so as to require that the title of such area be transferred on official county records, to the county.

Respectfully,
MARK McELROY
Attorney General